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DIVISION 5

PROCEDURAL RULES

718-005-0005

Purpose

(1) The Dispute Resolution Commission, established by Oregon Laws 1989, Chapter 718, is authorized by law to adopt rules to carry out its statutory responsibilities.

(2) These rules describe how the commission will provide notice prior to the adoption of rules.

(3) These rules supercede the temporary rules adopted February 16, 1990 and are effective April 17, 1990.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: DRC 1-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 3-1990, f. & cert. ef. 4-18-90

718-005-0010

Statutory Authority and Procedure

These rules are authorized by and carry out purposes of Oregon Laws 1989, Chapter 718 and were adopted pursuant to Section 16 of Oregon Laws 1989, Chapter 718 and ORS 183.310 et seq.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: DRC 1-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 3-1990, f. & cert. ef. 4-18-90

718-005-0015

Notice

Prior to adoption, amendment or repeal or any rule, the commission shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date of the intended action;

(2) By mailing a copy of the notice to persons on the commission's mailing list established pursuant to ORS 183.335(7);

(3) By mailing or furnishing a copy of the notice to:

(a) The United Press International;

(b) The Associated Press;

(c) Associations which have expressed an interest in and requested notice about the commission's activities;

(d) The Capitol Press Room.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: DRC 1-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 3-1990, f. & cert. ef. 4-18-90

DIVISION 10

GENERAL RULES

718-010-0000

Authority and Purpose

(1) The purpose of these rules is to provide procedures for the orderly conduct of meetings of the Dispute Resolution Commission. These rules are adopted pursuant to ORS Chapter 183, ORS 183.330(1) and Section 16 of Oregon Laws 1989, Chapter 718.

(2) These rules supercede the temporary rules adopted February 16, 1990, and are effective April 17, 1990.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0005

Quorum and Rules of Order

(1) Four members of the Commission constitute a quorum. The Commission may meet to discuss any matter in the absence of a quorum as provided by ORS 192.610 to 192.690 but may take no formal action on any matter unless a quorum is present.

(2) A majority of the Commission members present at a meeting must concur upon any action transacted by the Commission at such meeting. Any proposed Commission action must be moved by

a Commission member and seconded by another Commission member before a vote may be taken by the Commission.

(3) Whenever a quorum is present, the members may not deliberate on or discuss any matter subject to review by the Commission without having first given public notice.

(4) The Commission shall prepare written minutes for each meeting and may record the meetings. The minutes need not be verbatim, but shall include at least a listing members present; motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; results of all votes; and the substance of any discussion on any matter.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0010

Officers

(1) The Commission shall elect one of its members as chairperson and another as vice-chairperson. The chairperson and vice-chairperson shall serve for one year or until a successor is elected. Members may serve successive full terms in these offices. The officers may be removed by a unanimous vote of the other Commission members.

(2) The chairperson shall preside over all Commission meetings and shall determine the location of the Commission meetings.

(3) The vice-chairperson shall act in lieu of the chairperson, when the chairperson is unable to perform any mandatory or discretionary responsibilities.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0015

Meetings – Date and Location Notice

The Commission shall meet periodically, as determined by a majority of the Commission, at a time and place within the state specified by the chairperson. The chairperson may call a special meeting to be held at any place in the state, upon 24 hours notice to each member and the public. The Commission will endeavor to vary the locations of its meetings to give persons throughout the state an opportunity to observe and participate in its activities. The Commission will publish, subject to revision, the time, date and location for each future meeting which has been scheduled. The chairperson or designee, consistent with the requirements of ORS 192.610 to 192.690, shall give notice of each meeting of the Commission. In the event of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours notice.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0020

Agendas for Regular Meetings

(1) The agenda for each regular meeting will be prepared by the chairperson and shall set out all matters expected to come before the Commission at the meeting.

(2) The agenda may contain a "Consent Calendar" identifying items which are considered routine, such as minutes of previous meetings and personnel recognition which will be acted upon without discussion. However, if a Commission member objects to an item on the Consent Calendar, it will be removed from the Consent Calendar and placed on the regular agenda for discussion.

(3) Each agenda shall include a designated time period which has been reserved for the presentation of concerns by interested citizens who wish to address the Commission. The duration of this period will be established by the chairperson and lengthened or shortened at the Commission meeting by the chairperson as dictated by the length of the meeting, timing and duration of other Commission business.

(4) The agenda shall identify the proponent of items placed thereon at the request of members of the public pursuant to these procedures.

(5) The agenda, together with minutes of all previous meetings which have not been approved by the Commission, will normally be sent to members at least one week prior to a regular meeting. The agenda will also be sent to each person or organization on the Commission's mailing list, which has requested a copy.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0025

Matters Not on Agenda

Commission members may, with the approval of a majority of the members, raise matters at a meeting which were not placed on the agenda. A matter not on the agenda will not be acted upon unless a majority of the members present agree that the matter is of substantial immediate concern and should not be deferred until the next regular Commission meeting. The next Commission agenda will provide notification of such action.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0030

Order of Business

(1) The order of business of Commission meetings shall be as follows:

- (a) Introduction of new Commission members, resolutions for retiring Commission members, and other personnel recognition;
 - (b) Announcements;
 - (c) Minutes of previous Commission meetings. (Because the minutes previously will have been sent to the members, the reading of the minutes may be waived.) Corrections, additions and approval of minutes;
 - (d) Reports of standing and special committees;
 - (e) Consideration of agenda items.
- (2) The chairperson, unless a majority of the Commission disagrees, may revise the order of business and may limit debate on any item as necessary to conduct the meeting fairly and efficiently.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0035

Requests to Place Items on Agenda

Requests to place items on agendas for discussion only: Any person wishing to have an item placed on the agenda, including a suggested place of meeting, of a regular Commission meeting for purpose of discussion only shall give notice of the request in writing to the Commission at least two weeks prior to each meeting. The item will be placed on the agenda only with concurrence of the chairperson.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0040

Requests for Commission Action

Any person wishing the Commission to take formal action with respect to a particular subject shall file such request, together with all supporting information, with the Commission at least 20 calendar days prior to the date of the regular Commission meeting at which action is proposed to be taken. The item will be placed on the agenda only with the concurrence of the chairperson. The foregoing does not apply to petitions requesting the Commission to initiate a rulemaking proceeding, or petitions requesting the Commission to issue a declaratory ruling, for which procedures are set forth in the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, as adopted by the Commission.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0045

Committees

The chairperson may appoint such committees as deemed necessary, subject to disapproval of a majority of the Commission. The chairperson may determine the number of members of such committees and select the individual members. Those committees may include such Commission members or other interested persons as the chairperson deems appropriate. The chairperson may, with a majority approval of the Commission, abolish committees at any time. The individuals on such committees need not act as a group nor reach a consensus, but may report to the Commission individually.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0050

Commission Files

All Commission files shall be assembled in the Commission's official office. The Commission's files shall be maintained under the direction of the chairperson. The Commission shall maintain a record of the location of all files. Minutes of all Commission meetings shall be maintained in the Commission files for at least five years, and thereafter deposited in the State Archives.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0055

Commission Communications

Only the chairperson shall write other than routine or form letters in the name of the Commission unless members are specifically authorized in a Commission meeting to do so. All letters to be sent on behalf of the Commission should be prepared by Commission staff and copies appropriately filed and transmitted to the Commission. The Commission should approve in advance any correspondence which may materially affect policies and procedures. When a delay might render the Commission's functioning ineffective, the chairperson may be required to take immediate action which shall be reviewed at the next meeting of the Commission.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0060

Commission Agreements

Unless another member is expressly authorized by the Commission, only the chairperson may enter into agreements on behalf of the Commission. The chairperson may enter into such agreements as are necessary to carry out Commission policy and to enable the effective functioning of the Commission. Those agreements may include, but not be limited to working agreements with other governmental agencies as necessary to fulfill the statutory and administrative obligations of the Commission.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0070

Commission Expenditures

Unless another member is expressly authorized by the Commission, only the chairperson may incur financial obligations or authorize expenditures on behalf of the Commission. All such expenses shall be consistent with the legislatively approved budget and applicable state rules and regulations. Except for incidental expenses, not to exceed \$250, all expenditures shall receive prior Commission approval.

Stat. Auth.:

Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0080

Conflict of Interest

(1) Prior to each meeting the chairperson shall announce that there may be a potential conflict of interest: Because the Commission members are required by law to be well informed on the principles of and may be engaged in the business of dispute resolutions, there is a potential for a conflict of interest or the appearance of such a conflict. Individual Commission members shall also announce a potential conflict prior to consideration of or action on any agenda item as defined in ORS 244.020(8).

(2) Individuals who have announced a potential conflict arising from consideration of or action on any agenda item shall be excused from further deliberations or action on that item.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0085

Public Availability of Information

(1) Upon request, the Commission shall make available public records of the Commission, in accordance with ORS 192.410 through 192.500. The Commission may make those records available for inspection at no cost during regular business hours at the Commission's offices. The Commission shall, upon request, provide copies of public records at a cost reasonably calculated to reimburse it for its actual costs in making those records available. The Commission shall publish and may revise a schedule of those costs.

(2) Within 20 days of receipt of a request for records, under section (1) of this rule, the Commission shall either grant or deny the request. If the Commission fails to act within 20 days, the request shall be deemed denied.

(3) In the event that request for records is denied, the Commission shall notify the requestor, in writing, of the basis for the denial and of the requestor's right to appeal the denial to the Attorney General of the State of Oregon, as provided in ORS 192.450.

(4) The Commissions shall consider the reduction or waiver of any fees required to provide copies of records, if the records are requested by the news media, a non-profit public interest group, or any other person or entity, and the requestor provides a written statement in support of the reduction or waiver. The Commission may reduce or waive the fees if the Commission determines that reduction or waiver serves the public interest, taking into account the magnitude of the request, the Commission's resources, whether the information would not be obtainable by the requester without the reduction or waiver and any other factors relevant to the public interest.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0090

Rules of Procedure

The Commission adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, June 1988 edition. In any conflict between the Model Rules and specific Commission rules, the specific rules shall apply.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0100

Waiver and Suspension

These rules are intended to provide guidance for the orderly conduct of the Commission's business. Inadvertent failure by the Commission to comply with these rules shall not invalidate any action. The Commission may also, by a majority of the quorum present, temporarily suspend these rules.

Stat. Auth.:

Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

718-010-0110

Amendments

These rules, or portions thereof, may be amended or repealed at any time by a vote of a majority of the members, and in compliance with the provisions of ORS Chapter 183 governing rule-making activities.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 2-1990(Temp), f. 2-28-90, cert. ef. 3-1-90; DRC 4-1990, f. & cert. ef. 4-18-90

DIVISION 20

OREGON COMMUNITY DISPUTE RESOLUTION PROGRAM RULES

718-020-0000

Scope of Application of Rules

These rules apply to the application process and to programs granted funds pursuant to ORS 36.155(1)(b). These rules shall be known as the Oregon Community dispute Resolution Program Rules. Future rules may incorporate provisions of these rules in regard to other dispute resolution programs.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0010

Definitions for OAR 718-020-0000 to 718-020-0160

(1) "Applicant" is an entity which has submitted an application for program funding pursuant to ORS 36.155(1)(b).

(2) "Commission" means the Dispute Resolution Commission created under ORS 36.115.

(3) "Director" means the Executive Director appointed by the Dispute Resolution Commission under ORS 36.130.

(4) "Mediation" is defined as in ORS 36.110(6) and includes case development and conciliation.

(5) "Community Dispute Resolution Program" means a program that has been determined eligible for funding under ORS 36.155(1)(b) and these rules.

(6) "Grantee" is a community dispute resolution program that has been awarded funding pursuant to ORS 36.155(1)(b).

(7) "Rules" refers to OAR Chapter 718, commencing with OAR 718-020-0000 and ending with OAR 718-020-0160.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0020

Program Services

(1) A purpose of ORS 36.100–36.175 is to foster the development of community based dispute resolution programs that will assist citizens in resolving disputes and developing skills in conflict resolution. To that end, a community dispute resolution program funded pursuant to ORS 36.155(1)(b) shall provide at a minimum the following services:

(a) Citizen education in conflict resolution skills to assist citizens in resolving their own disputes peacefully; and

(b) Community mediation services provided in part by volunteer mediators.

(2) In addition to these essential services, programs may elect to provide other services in order to respond to local identified needs. Such services may include, but are not limited to:

(a) Methods for addressing the interests of crime victims in criminal cases when those cases are either not prosecuted for lack of funds or could be more effectively handled outside the courts;

(b) Arbitration; and

(c) Training for dispute resolvers.

Stat. Auth.:
Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0030

Entities Eligible for Funding

A community dispute resolution program must be one of the following:

- (1) A governmental entity with a separate dispute resolution program budget and a dispute resolution program advisory committee of at least five (5) representative members of the community, which advisory committee meets at least quarterly; or
- (2) A nonprofit organization registered in Oregon with a board of directors of at least five (5) representative members of the community which board of directors meets at least quarterly. If an applicant is a nonprofit organization established for other purposes, it shall have a separate dispute resolution program budget and a separate advisory committee of at least five representative members of the community, which advisory committee shall meet at least quarterly.

Stat. Auth.: ORS 36.175

Stats. Implemented: ORS 36.175

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91; DRC 1-1999, f. & cert. ef. 8-3-99

718-020-0040

Fees for Service

(1) A community dispute resolution program is not required to charge fees to disputants for dispute resolution services. If a community dispute resolution program charges fees for dispute resolution services, a sliding fee scale or waiver or deferment based on income must be offered. The community dispute resolution program shall explain to all disputants, in advance of the services being furnished, the amount of any fees and other costs that may be charged.

(2) A community dispute resolution program shall not charge the following fees:

- (a) Fees contingent on outcome; or
- (b) Fees calculated on the basis of the amount in controversy.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0050

Participating Fund Requirements

(1) Grantees shall be required to match the funding granted to them pursuant to ORS 36.155(1)(b) at the following levels:

- (a) First grant year — 10 percent;
- (b) Second grant year — 25 percent;
- (c) Third grant year — 50 percent;
- (d) Fourth grant year — 75 percent;
- (e) Fifth grant year — 100 percent.

(2) Program participating funds may be generated through fees for services, grants, donations, fundraising, in-kind donations and revenue generating efforts. The Commission shall retain discretion to waive or modify the participating fund requirements based upon the grantee's good faith efforts and substantial compliance with such requirements.

(3) In-kind donations may be reported or credited as revenue or expenditures, if such donations:

- (a) Will be received during the proposed budgetary period; and
- (b) Represent necessary and ordinary expenses or services related to the operation and management of the grantee.

(4) Documentation of in-kind donations shall include descriptions of the services or materials donated, the dates received, and the names and addresses of the donors. Volunteer services shall be documented by means of time sheets signed by the volunteer and verified by the program manager.

(5) In-kind donations and services — such as office space and administrative, clerical and professional services — shall be valued at the prevailing market rate.

(6) The following may not be included as in-kind donations:

(a) Volunteer time by members of the grantee's board of directors or advisory committee while serving in the capacity as members of the board or committee; and

(b) Volunteer time provided for mediation, arbitration or other dispute resolution services.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0060

Administrative Procedures

(1) Although grantees may accept mandatory referrals to mediation, they shall provide the referred parties with written notice specifying that participation in the mediation session is voluntary.

(2) A written agreement to maintain the confidentiality of the mediation communications shall be offered to participants for their acceptance and signature no later than the initial mediation session.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0070

Qualifications and Minimum Training Requirements for Mediators in Community Dispute Resolution Programs

(1) Qualifications: Mediators shall possess good communication skills, and ability to respect diversity and differences, and an ability to maintain confidentiality and impartiality.

(2) Training: Mediators shall complete a basic mediation curriculum and an apprenticeship:

(a) A basic mediation curriculum shall be at least 30 hours and shall include a minimum of six hours' participation by each trainee in no less than three supervised role plays; a trainee self-assessment; and an evaluation of the trainee by the trainer which identifies areas where trainee improvement is needed for the benefit of both the trainee and the program. A basic mediation curriculum shall seek to develop mediation knowledge and skills including information gathering, relationship skills, communication skills, problem-solving, conflict management, and ethical practices. The curriculum shall specifically address the following areas:

- (A) Active listening, empathy and validation;
- (B) Sensitivity and awareness of cross-cultural issues;
- (C) Maintaining neutrality;
- (D) Identifying and reframing issues;
- (E) Establishing trust and respect;
- (F) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;

(G) Shaping and writing agreements;

(H) Assisting individuals during intake and case development to resolve their disputes with a minimum of intervention by a third party; and

(I) Ethical standards for mediator conduct adopted by state and national organizations.

(b) The apprenticeship shall include participation in a minimum of two mediation cases under the supervision of an experience mediator or trainer, with at least one case resulting in a completed mediation session.

(3) An individual who, prior to the effective date of these rules, has participated in substantially similar training or completed 100 hours as a mediator shall have met the training requirements established by these rules.

(4) An individual who has completed a substantially similar training in another state after the effective date of these rules shall have met the training requirements established by these rules.

(5) Each grantee shall insure that its mediators have received basic curriculum training from a lead trainer who has completed:

(a) Mediation training substantially comparable to that required under these rules;

(b) Fifty hours of mediation experience; and who has

(c) Substantial background as a mediation trainer or an assistant.

(6) A grantee may establish additional training requirements beyond these minimum training requirements. There shall be no formal academic requirements for mediators in community dispute resolution programs.

(7) An applicant or grantee may request from the Commission a waiver or modification of training requirements in cases where the

applications of the rules would place an undue hardship on the program.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0080

Reporting Requirements

(1) Each grantee shall provide annually to the Dispute Resolution Commission statistical data on: its operating budget, the number and kinds of education programs, staff and volunteer qualifications, training activities, the number and source of referrals, types of disputes referred, dispute resolution services provided, number of persons served, case outcome, and such other information the Dispute Resolution Commission may require.

(2) Within ninety days of the close of each grant period, the grantee shall submit to the commission a final summary of revenues and expenses.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0090

Evaluation Participation

Each grantee shall cooperate with the Dispute Resolution Commission in developing methods for evaluating the effect of the dispute resolution services provided by the grantee on its community and the justice system.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0100

Declaration of Available Funds for Counties and Funding Cycles

The Commission shall determine before July 1 of each odd-numbered year each county's share of the amount collected pursuant to ORS 36.170 and 46.221. At the same time, the Commission shall adopt and publish a statement of the amount available to each county for grants to community dispute resolution programs in that county. The statement adopted shall include notice of the funding cycle.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0110

County Declaration of Intent to Participate

(1) A county shall notify the Commission on or before December 31 of each odd-numbered year of its intention to participate in the expenditure of funds for programs funded under ORS 36.155(1)(b). Such notification shall be by resolution of the appropriate board of county commissioners.

(2) A county may notify the Commission in writing at any time that it does not intend to participate in the expenditure of funds for programs funded under ORS 36.155(1)(b).

(3) The Dispute Resolution Commission may assume the county's role:

(a) Upon notice from the county, at any time, that it does not intend to participate; or

(b) If the county does not provide notice of intent to participate on or before December 31 of each odd-numbered year.

(4) If the Commission has assumed the county's role, the Commission shall contract with a program for not more than two years at a time. If the Commission has contracted with a program in a county, the county must notify the Commission 90 days prior to the expiration of the contract of its intent to assume participation in expenditure of funds.

Stat. Auth.: ORS 36.175
Stats. Implemented: ORS 36.160
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91; DRC 1-1999, f. & cert. ef. 8-3-99

718-020-0120

County Dispute Resolution Program Coordinator

(1) Each board of commissioners electing to participate in the expenditure of funds shall designate a person to function as the

county dispute resolution program coordinator. To assure the neutrality and absence of any conflict of interest, the coordinator shall not directly participate in any community dispute resolution program.

(2) The coordinator shall maintain public information on any dispute resolution services within the county including name and telephone number of the coordinator, availability of grant monies to fund local programs, the grant solicitation and award process, and the program names and services provided by grantees in that county.

Stat. Auth.:
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0130

Application Process

(1) A board of commissioners, or the Dispute Resolution Commission, if the Commission has assumed the county's role, shall issue a Request for Applications to provide the program services funded under ORS 36.155(1)(b).

(2) The application and selection process shall be open and shall encourage potential applicants to collaborate in designing programs to serve county needs.

(3) An applicant shall submit the original application to the participating county, and a copy of the application shall be sent simultaneously to the Dispute Resolution Commission.

(4) During any grant biennium, a board of commissioners may ask the Commission to extend a grantee's agreement for the duration of the biennium. In the event the Commission has assumed the county's role, the Commission may allow extension of a grantee's agreement for the duration of a biennium.

(5) In the event of an extension approval, the grantee shall submit an application which meets requirements in OAR 718-020-0140. The Commission shall review the application to determine whether the applicant is eligible under these rules.

Stat. Auth.: ORS 36.175
Stats. Implemented:
Hist.: DRC 1-1991, f. & cert. ef. 2-22-91; DRS 1-1994, f. & cert. ef. 6-23-94

718-020-0140

Application Requirements

All applicants shall provide the following information as part of their application for eligibility determination:

(1) A statement of the program's goals, objectives and activities including citizen education in conflict resolution skills and community mediation services.

(2) A description of community problems to be addressed; the proposed geographic area of service; the service population, and the number of persons the applicant will have the capacity to serve on an annual basis; the types of disputes to be handled; the types of dispute resolution services to be offered; and any access restrictions to be imposed by the applicant.

(3) A description of the applicant's organizational structure.

(4) A plan for recruiting, selecting and using volunteer mediators.

(5) A description of any training activities including the mediation curriculum and apprenticeship.

(6) A plan for publicizing its services and resources to potential referral agencies, individuals, civic groups, courts and justice system agencies.

(7) The applicant's organizational chart, personnel policies, and resumes of all professional staff members.

(8) A proposed budget including the amount and sources of participating funds for the grant period, and any fee schedule to be used by the applicant. If available, financial reports shall also be submitted for the previous two years of the applicant's services.

(9) A description of program evaluation plans.

(10) Letters of support from community organizations, judicial and legal system representatives, administrative agencies, or other appropriate public service organizations in the proposed area of service. Such letters should, if appropriate, attest to the organization's willingness to make referrals to the applicant.

(11) An Affirmative Action statement.

(12) Other information required by the county.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0150

Selection Process

(1) The Commission shall acknowledge receipt of each application and shall review each application to determine whether the applicant is eligible for funding under these rules. The Commission shall send a notice of eligibility determination to each applicant and to the county dispute resolution coordinator.

(2) The county shall review the applications of those applicants determined eligible by the Commission and shall select the program(s) for funding. Criteria for the selection of funding may include:

(a) The ability of the applicant to address unmet community needs in the proposed geographical area of service;

(b) The structure and scope of the services to be provided by the applicant;

(c) The applicant's experience and qualifications in dispute resolution services;

(d) The amount of the requested grant and the reliability of the applicant's other funding sources; and

(e) The adequacy and cost of personnel, services and supplies, and capital outlay.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0160

Program Compliance

(1) The Commission shall enter into a contract with each grantee which specifies the kinds and level of services a grantee shall provide during the designated grant period.

(2) The Director shall have the power to examine the records of any grantee to determine compliance with the contract provisions and these rules.

(3) In the event that the Director determines a program is not in substantial compliance with the terms of its contract, the Director shall negotiate with the manager of the program to bring the program into compliance. If the program continues to be out of compliance, the Director shall provide written notice to the program and the county of the specific requirements that must be brought into compliance within 30 days.

(4) After the 30 days period, the Director shall initiate a request for mediation, with the mediator to be selected by mutual agreement of the program and the Director. If the mediator is not selected within 15 days, the Director shall ask the presiding judge in the county to select a mediator.

(5) If the mediation is not successful in resolving the compliance issues, the Director shall, after giving the program and the county not less than 30 days, conduct a hearing to identify whether there is substantial compliance or satisfactory progress being made towards compliance. The Commission may suspend funding of the program until the compliance requirements are met.

Stat. Auth.:

Stats. Implemented:

Hist.: DRC 1-1991, f. & cert. ef. 2-22-91

718-020-0170

Funds Available for Community Dispute Resolution Programs

Funds received pursuant to ORS 36.170 and 46.221 shall be awarded by the Commission for community dispute resolution programs in the county from which the funds originated. Each county's respective share shall be fifty percent of the funds attributable to that county for the period of July 1 of each even-numbered year through June 30 of the following even-numbered year.

Stat. Auth.: ORS 36.175

Stats. Implemented: ORS 36.155

Hist.: DRC 2-1991, f. & cert. ef. 4-5-91; DRC 1-1999, f. & cert. ef. 8-3-99

718-020-0190

Funding Period for Grants

(1) Grants shall be available for the period of July 1 of each odd-numbered year through June 30 of the following odd-numbered year.

(2) The Commission shall contract with a community dispute resolution program for up to two years if the county has elected to participate in the expenditure of funds.

(3) If the Commission has assumed the county's role in selection, the Commission shall contract with a program for not more than two years at a time.

Stat. Auth.: ORS 36.175

Stats. Implemented: ORS 36.160

Hist.: DRC 2-1991, f. & cert. ef. 4-5-91; DRC 1-1999, f. & cert. ef. 8-3-99

DIVISION 30

MINIMUM QUALIFICATIONS AND TRAINING FOR COURT CONNECTED DOMESTIC RELATIONS MEDIATORS

718-030-0000

Scope of Application of Rules

Pursuant to ORS 36.175(5), these rules establish the minimum education, training, and experience requirements for court-connected domestic relations mediators under ORS 107.755 to 107.785. These rules do not alter in any way the requirements pertaining to personnel who perform conciliation services under ORS 107.510 to 107.610.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0010

Definitions for OAR 718-030-0000 to 718-030-0100

(1) "Court-Connected Domestic Relations Mediator" means personnel who provide mediation services as defined by ORS 107.755 to 107.785, whether provided in connection with conciliation services under ORS 107.510 to 107.610 or provided separately.

(2) "Hiring Authority" means any entity which meets the criteria set forth in ORS 107.775, 1(a), (b), (c), and 3, and is chosen by the Circuit Court to establish a mediation program with the prior approval of the governing body of the county.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0020

Minimum Qualifications

The foundation of competency in court-connected domestic relation mediation is the education, training and experience of the mediator. A court-connected domestic relations mediator shall be required to meet all of the minimum requirements for education, training and experience, except as provided for in OAR 718-030-0080(1) and (2).

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0030

Hiring Authority Responsibilities

The hiring authority shall be responsible for assuring that a court-connected domestic relations mediator meets or exceeds the minimum qualifications and continuing education requirements described herein.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0040

Education Requirements

(1) A court-connected domestic relations mediator shall possess a master's degree from an accredited college or university with substantial course work in a behavioral science, or a law degree from an

accredited law school with substantial course work and/or Continuing Legal Education credits in family law.

(2) The Dispute Resolution Commission may approve the successful completion of a standardized performance-based evaluation to substitute for the formal degree requirement if and when such an evaluation process is developed.

(3) Exception to the education requirements may be allowed pursuant to OAR 718-030-0080(1) and (2).

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0050

Mediation Training Requirements

A court-connected domestic relations mediator shall have completed a basic mediation curriculum:

(1) A basic mediation curriculum shall be at least 30 hours and shall include a minimum of six hours' participation by each trainee in no less than three supervised role plays; a trainer self-assessment; and an evaluation of the trainee by the trainer which identifies areas where trainee improvement is needed for the benefit of both the trainee and the program. A basic mediation curriculum shall seek to develop mediation knowledge and skills including information gathering, relationship skills communication skills, problem-solving, conflict management, and ethical practices. The curriculum shall specifically address the following areas:

- (a) Active listening, empathy and validation;
- (b) Sensitivity and awareness of cross-cultural issues;
- (c) Maintaining neutrality;
- (d) Identifying and reframing issues;
- (e) Establishing trust and respect;
- (f) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;

(g) Shaping and writing agreements;

(h) Assisting individuals during intake and case development to resolve their disputes with a minimum of intervention by a third party; and

(i) Ethical standards for mediator conduct adopted by state and national organizations.

(2) The hiring authority shall insure that the mediator has received basic curriculum training from a lead trainer who has completed:

- (a) Fifty hours of mediation experience; and who has;
- (b) Substantial background as a mediation trainer or an assistant.

(3) A court-connected domestic relations mediator shall also complete a domestic relations mediation curriculum of at least 24 hours with participation as a mediator or comediator in a minimum of three simulated or actual domestic relations mediation cases for at least six hours under the supervision of an experienced lead trainer or mediator.

(4) A lead trainer under section (3) of this rule, or a supervisor for the experience requirements in OAR 718-030-0070(1) shall have participated in a minimum of 35 domestic relations mediations or a total 350 hours of domestic relations mediation, and have an understanding of court-connected domestic relations programs.

(5) An individual who has participated in substantially similar training shall have met the training requirements established by these rules.

(6) Exception to the mediation training requirements may be allowed pursuant to OAR 718-030-0080(1) and (2).

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0060

Subject Knowledge Requirements

(1) The hiring authority shall ensure that a court-connected domestic relations mediator has completed seminar or graduate level course work which substantially covers each of the following:

- (a) Child development;
- (b) Alcohol and drug abuse;

- (c) Domestic violence and child abuse;
- (d) Family financial planning and budgeting;
- (e) Family conflict theories and dynamics; and
- (f) Family law and divorce process.

(2) If a mediator provides mediation of financial decisions, the hiring authority shall ensure that the mediator meets the qualifications in OAR chapter 718, division 50.

(3) Exception to the subject knowledge requirements may be allowed pursuant to OAR 718-030-0080(1) and (2).

Stat. Auth.: ORS 36.175

Stats. Implemented: ORS 36.175

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92; DRC 1-1999, f. & cert. ef. 8-3-99

718-030-0070

Experience Requirements

(1) The hiring authority shall ensure that a court-connected domestic relations mediator has one of the following types of experience:

(a) Participation in at least 20 domestic relations mediation cases supervised by or comediated with a domestic relations mediator or trainer as defined in OAR 718-030-0050(4);

(b) At least two years full time equivalent mediation experience;

(c) At least two years full time equivalent of direct therapy or counseling experience with a preferred emphasis on short term problem solving in a private, public, or private non-profit agency; or

(d) A practicing attorney with at least two years full time equivalent handling a domestic relations or juvenile caseload.

(2) Those who qualify under subsection (1)(c) or (d) of this rule, must also have participated as a mediator or comediator in a total of six actual domestic relations mediations or a total of 60 hours of domestic relations mediation, and have an understanding of court-connected domestic relations programs.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0080

Substitutions and Waivers

(1) The hiring authority for good cause may allow appropriate substitutions for any of the minimum qualifications, however, as a pre-hiring condition, a candidate shall be required in writing to meet all of the minimum qualifications within a specified reasonable period of time.

(2) The hiring authority for good cause may petition to the Dispute Resolution Commission for a waiver of specific minimum qualification requirements as stated in OAR 718-030-0040 to 718-030-0070.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0090

Continuing Education Requirements for a Court Connected Domestic Relations Mediator

Following employment, the hiring authority shall require the mediator to attend at least 12 hours of continuing mediation education each year. Continuing education choices shall be made in consultation with the mediation program supervisor. To the extent that the mediator's training prior to employment does not include the following topics, those topics shall be emphasized in the mediator's continuing education requirements:

(1) The effects of domestic violence on children, and the legal rights of domestic violence victims;

(2) Gender, ethnic and cultural diversity;

(3) Divorce adjustment for adults and children;

(4) "The best interest of the child";

(5) Psychopathology;

(6) Crisis intervention with families;

(7) Oregon Child Support Guidelines;

(8) Mediation models, theory and techniques;

(9) Program administration and service delivery;

(10) Development of parenting plans;

(11) Establishment of visitation schedules;

(12) Practices and procedures of state and local social service agencies;

(13) Safety issues for mediators; and

(14) Family Systems Theory.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

718-030-0100

Existing Court-Connected Domestic Relations Mediator

A court-connected domestic relations mediator practicing under ORS 107.755 to 107.785 in the State of Oregon shall have six months from the effective date of these rules to meet the minimum requirements described in OAR 718-030-0040 to 718-030-0070.

Stat. Auth.: ORS 36.175(5)

Stats. Implemented:

Hist.: DRC 1-1992, f. & cert. ef. 4-21-92

DIVISION 40

MINIMUM QUALIFICATIONS AND MINIMUM TRAINING FOR MEDIATORS ON COURT PANELS

718-040-0000

Scope of Application of Rules

(1) Pursuant to ORS 36.175(5) and 36.200(1), these rules establish the minimum qualifications and training for mediators serving on mediation panels established in district and circuit courts, including cases in small claims division and forcible entry and detainer cases, except as provided in section (2) of this rule.

(2) These rules do not apply to:

(a) Court connected domestic relations mediators while mediating in proceedings covered by OAR 718-030-0000 to 718-030-0100; and

(b) Persons while mediating in proceedings under ORS 107.700 to 107.730.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0010

Definitions for OAR 718-040-0000 to 718-040-0120

(1) "Mediator" means a third party who performs mediation as defined in ORS 36.110(6).

(2) "Listed Civil Case Mediator" means a mediator serving on a mediation panel established in a district or circuit court and who is eligible to mediate in civil cases other than those listed in section (3) of this rule.

(3) "Listed Domestic Relations Mediator" means a mediator serving on a mediation panel established in a district or circuit court and who is eligible to mediate in cases which involve disputes over matters in ORS Chapters 107 to 109.

(4) "Listed Mediator" means a listed civil case mediator or a listed domestic relations mediator.

(5) "Panel" means a list of mediators established by a court pursuant to ORS 36.200(1).

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0020

Civil Case Mediators — Summary of Minimum Qualifications and Training Requirements

A listed civil case mediator shall have:

(1) Completed a total of at least 36 hours of training including:

(a) At least 30 hours of basic mediation training as described in OAR 718-040-0040; and

(b) At least six hours of training in the court system as described in OAR 718-040-0070.

(2) Completed an experience requirement as described in OAR 718-040-0080;

(3) Subscribed to the standards of conduct in OAR 718-040-0100; and

(4) Completed a disclosure as described in OAR 718-040-0110.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0030

Domestic Relations Mediators — Summary of Minimum Qualifications and Training Requirements

A listed domestic relations mediator shall have:

(1) Completed the following three training requirements:

(a) The mediation curriculum described in OAR 718-040-0050(1);

(b) The substantive training described in OAR 718-040-0060; and

(c) At least six hours of training in the court system as described in OAR 718-040-0070.

(2) Completed an experience requirement as described in OAR 718-040-0090;

(3) Subscribed to the standards of conduct in OAR 718-040-0100; and

(4) Completed a disclosure as described in OAR 718-040-0110.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0040

Civil Case Mediators — Basic Mediation Training Requirements

(1) A listed civil case mediator shall have completed a basic mediation curriculum of at least 30 hours which shall include but not be limited to the following:

(a) A minimum of six hours participation by each trainee in three or more supervised role plays with feedback; and

(b) A trainee self-assessment.

(2) A basic mediation curriculum shall seek to develop mediation knowledge and skills including information gathering, relationship skills, communication skills, problem solving, conflict management, and ethical practices.

(3) The curriculum shall specifically address the following areas:

(a) Active listening, empathy and validation;

(b) Sensitivity to and awareness of cross-cultural issues;

(c) Maintaining neutrality;

(d) Identifying and reframing interests and issues;

(e) Establishing trust and respect;

(f) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;

(g) Shaping and writing agreements; and

(h) Ethical standards for mediator conduct adopted by state and national organizations.

(4) The basic curriculum training must be provided by a lead trainer who has completed:

(a) Mediation training substantially comparable to that required under these rules;

(b) Fifty hours of mediation experience; and who has

(c) Substantial background as a mediation trainer or an assistant mediation trainer.

(5) An individual who has participated in substantially similar training shall have met the basic mediation training requirements established by sections (1) through (4) of this rule.

(6) An individual who has completed the basic mediation curriculum prescribed either in the Community Dispute Resolution Program Rules (OAR 718-020-0070(2), or in the Minimum Qualifications and Training for Court-Connected Domestic Relations Mediators Rules (OAR 718-030-0050(1) and (2) shall have met the basic mediation training requirements established by sections (1) through (4) of this rule.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0050

Domestic Relations Mediators — Mediation Training Requirements

(1) A listed domestic relations mediator shall have completed either:

(a) At least a 30 hours basic mediation curriculum as described in OAR 718-040-0040 and a 24 hours family or divorce mediation curriculum as described in section (2) of this rule;

(b) At least a 40 hours curriculum which combines the basic mediation curriculum as described in OAR 718-040-0040 and the family or divorce mediation curriculum as described in section (2) of this rule.

(2) A family or divorce mediation curriculum shall include at least four hours in each of the following areas:

- (a) Mediation process;
- (b) Psychological issues;
- (c) Child development;
- (d) Family law; and
- (e) Family economics.

(3) An individual who has participated in substantially similar training shall have met the training requirements established by section (2) of this rule.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0060

Domestic Relations Mediators — Substantive Training Requirements

A listed domestic relations mediator shall have completed at least five hours of training in each of the following:

- (1) Alcohol and drug abuse; and
- (2) Domestic violence and child abuse.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0070

All Listed Mediators — Training in the Court System

(1) All listed mediators shall have completed at least six hours of training which shall include but not be limited to the following subject areas:

(a) Knowledge of the court system including but not limited to:

- (A) Basic legal vocabulary;
- (B) How to read a court file; and
- (C) The effect of a mediated agreement on the case including but not limited to finality, appeal rights, remedies, and enforceability;

(b) Knowledge of the range of available administrative and other dispute resolution processes;

(c) Knowledge of the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration;

(d) Working with represented and unrepresented parties including but not limited to:

- (A) The role of litigants' lawyers in the mediation process;
- (B) Attorney-client relationships;
- (C) Working with lawyers; and
- (D) Attorney fee issues; and
- (e) Understanding motions, discovery, and other court rules and procedures.

(2) An individual who has participated in substantially similar training or has experience working in or before the courts shall have met the training requirements established by section (1) of this rule.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0080

Civil Case Mediators — Experience Requirements

A listed civil case mediator shall have observed live mediations or participated as a mediator in at least three cases that have been filed in court.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0090

Domestic Relations Mediators — Experience Requirements

A listed domestic relations mediator shall have observed live mediations or participated as a mediator in domestic relations cases for a period of at least 30 hours including at least three actual domestic relations cases involving children.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0100

All Listed Mediators — Standards of Mediator Conduct

All listed mediators shall subscribe to the following standards of mediator conduct:

(1) General Responsibilities:

(a) Mediators have duties to the parties, to their profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties;

(b) Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, show no bias toward individuals or institutions involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.

(2) Responsibilities to the Parties:

(a) Impartiality. The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations which the mediator may have with any participant and obtain all parties' consent to proceed as mediator;

(b) Informed Consent. The mediator has an obligation to assure that all parties understand the nature of the mediation process, procedures to be utilized and the particular role of the mediator. Each party's consent to proceed with mediation should be obtained early, prior to the beginning of substantive negotiations;

(c) Confidentiality. Maintaining confidentiality is generally critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator shall inform mediation participants of the degree to which communications connected with the mediation process shall be confidential, including any individual caucuses which may be utilized. Except as legally required, the mediator should resist testifying, and disclosing other information about the substance of a mediation at any proceeding without the consent of all mediating parties;

(d) Suspension or Termination of Mediation. The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason, except as is required by law. If the mediator believes that participants are unable or unwilling to participate effectively in the mediation process, the mediator should suspend or terminate the mediation, except as is required by law. If the parties reach a final impasse, the mediator should not prolong unproductive discussions which result in emotional and monetary costs to the participants.

(3) Defining the Process:

(a) Comparison to Other Processes. In appropriate cases, the mediator shall explain that mediation is not arbitration, legal representation or therapy. The mediator shall explain that the mediator will not decide any issues for the parties;

(b) Independent Advice and Information. In mediations in which disputants personally represent their own individual interests and substantial legal issues exist, the mediator shall encourage par-

participants to obtain desired individual legal advice and individual legal review of any mediated agreement as is reasonably necessary for the parties to reach an informed agreement;

(c) Full Disclosure. In mediations in which disputants represent their own individual interests, the mediator shall seek to ensure to the mediator's and all mediation participants' reasonable satisfaction the full disclosure of relevant information in the mediation process. If the mediator believes that full disclosure is not reasonably being made, the mediator shall express such concern to the mediation participants. If this concern is not reasonably satisfied, the mediator may suspend or terminate the mediation;

(d) Opportunity for Full Expression of Interests. The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests;

(e) Fees. The mediator has a duty to define and describe any fees for the mediation and to agree with participants as how fees are to be shared and the manner of payment before proceeding to facilitate substantive negotiations. When setting fees, the mediator shall ensure that they are explicit, fair, and commensurate with the service to be performed. Unearned fees must be promptly returned to the participants. It is inappropriate for a mediator to charge contingent fees or to base fees upon the outcome of a mediation. No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients;

(f) Additional Representation or Roles. A mediator should not engage in any non-mediative role relative to the subject matter of a mediated dispute, except by the informed consent of all mediation participants.

(4) Responsibilities to the Profession and the Public:

(a) Continuing Education. A mediator should participate in continuing mediation education and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professionals to promote mutual professional development;

(b) Advertising. All mediation advertising must honestly represent the mediator's qualifications and the services to be rendered. No claims of specific results or promises should be made.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0110

All Listed Mediators — Disclosure of Information About Mediator

A listed mediator shall have submitted to the court for public dissemination the following information:

- (1) Name;
- (2) Business name;
- (3) Address;
- (4) Telephone number;
- (5) Facsimile number;
- (6) Description of formal education;
- (7) Description of mediation training, including dates, trainers' names, evidence of completion, and training outline(s);
- (8) Description of mediation experience;
- (9) Relevant organizations with which the mediator is affiliated;
- (10) Description of other relevant experience;
- (11) Evidence of subscription to the Standards of Mediator Conduct in OAR 718-040-0090;
- (12) Description of how fees are established; and
- (13) Statement of case preference in the following form:

CATEGORIES OF CASES

	Yes	No
Business	_____	_____
Domestic Relations	_____	_____
Neighborhood/Community	_____	_____
Employment	_____	_____
Small Claims	_____	_____
Landlord-Tenant	_____	_____
Probate	_____	_____
Torts	_____	_____
Other (Specify)	_____	_____

Oregon Administrative Rules Compilation

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93

718-040-0120

Additional Minimum Qualifications and Training Requirements

Through July 1, 1995, in consultation with and upon 60 days notice to the Dispute Resolution Commission, courts may adopt additional minimum qualifications and training requirements for either all listed mediators or for sub panels of listed mediators. These additional qualifications shall be consistent with ORS 36.200 and these rules.

Stat. Auth.: ORS 36.200(1)

Stats. Implemented:

Hist.: DRC 1-1993, f. & cert. ef. 4-23-93; DRC 1-1993, f. & cert. ef. 4-23-93

DIVISION 50

MINIMUM QUALIFICATIONS AND TRAINING REQUIREMENTS FOR COURT CONNECTED DOMESTIC RELATIONS FINANCIAL MEDIATORS

718-050-0000

Scope of Application of Rules

These rules establish the minimum education, training, experience and conduct requirements for court-connected domestic relations financial mediators in programs established under ORS 107.755(4). These rules are supplementary to the provisions of OAR 718 Division 30 as to financial mediators. OAR 718-030-0060(1) is reaffirmed as to financial mediators. OAR 718-030-0060(2) is superseded as to financial mediators. These rules do not apply to mediators in Division 40 programs.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)

Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475

Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0010

Definitions

(1) "Court connected domestic relations financial mediator" and "financial mediator" mean personnel who provide financial mediation services under ORS 107.755(4).

(2) "Hiring authority" means any entity which contracts with or employs personnel to provide court-connected domestic relations financial mediation.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)

Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475

Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0020

Hiring Authority Responsibilities

The hiring authority shall be responsible for assuring that a court-connected domestic relations mediator meets or exceeds the minimum qualifications and continuing education requirements described in this Division.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)

Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475

Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0030

Education Requirements

A domestic relations financial mediator shall possess a master's degree from an accredited college or university with substantial course work in behavioral science, or a law degree from an accredited law school with substantial course work and/or continuing legal education credits in family law.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)

Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475

Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0040

Training Requirements

In addition to the training required for court-connected domestic relations mediators under OAR 718-030-0050, the financial mediator shall have:

(1) Forty (40) hours of training on legal and financial issues in separation, divorce, and family reorganization in Oregon including property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, joint and several liability for family debt, a basic understanding of corporate and partnership law, retirement interests, enhanced earning capacity, personal bankruptcy, ethics (including unauthorized practice of law), drafting, legal process (including disclosure problems), the needs of pro se parties, the desirability of review by independent counsel, recognizing the finality of the decree, and methods to carry out the parties' agreement. Twenty-four (24) of the forty (40) hours must be in an integrated training.

(2) Of the forty (40) hours required in paragraph 1, six (6) hours must be in three (3) supervised role plays in financial mediation and fifteen (15) hours must be in training accredited by the Oregon State Bar.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0050

Supervised Experience

In addition to the experience requirements of OAR 718-030-0070, the financial mediator shall complete participation in:

(1) Six (6) financial mediation cases and a total of forty (40) hours of mediation with supervision by a qualified supervisor, including four (4) client hours with the supervisor present.

(2) A "qualified supervisor" is a mediator who:

(a) Affirms that she/he meets the qualifications in this rule; and

(b) Has been a family mediator for three (3) years with at least 250 hours and 25 cases involving domestic relations financial mediation; and

(c) Has in force malpractice insurance which covers her/him in the supervisory role; and

(d) Will, at the end of the supervisory experience, issue a letter of certification to the applicant stating whether the applicant has satisfactorily fulfilled the supervision, according to guidelines issued by the Oregon Dispute Resolution Commission.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0060

Supervisors

After an approved applicant has been on the panel and active for three (3) years, and if she/he qualifies under OAR 718-050-0050(2), she/he shall provide supervision as set forth at OAR 718-050-0050(1). The supervisor shall be compensated in amounts as agreed between the applicant and her/his supervisor. The Oregon Dispute Resolution Commission shall maintain a list of qualified supervisors.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0070

Qualifications Review

(1) In programs where mediators are independent contractors, the hiring authority shall appoint a panel consisting of at least a representative of the hiring authority, a mediator or supervisor qualified under Division 50, and an attorney who practices domestic relations law locally.

(2) The panel shall interview each applicant solely to determine whether the applicant meets the requirements of OAR 718 Division 50 for approval, substitution, or waiver of minimum qualifications. The review panel shall report its recommendation to the hiring authority in writing.

(3) The hiring authority has the sole and final authority to determine whether the applicant has fulfilled the requirements of the rule, or an application for substitution should be granted.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0080

Substitutions and Waivers

(1) The hiring authority for good cause may allow appropriate substitutions for any of the minimum qualifications; however, as a pre-hiring condition, the hiring authority shall require the applicant to commit to a written plan to meet the minimum qualifications within a specified reasonable period of time.

(2) The hiring authority for good cause may petition the Dispute Resolution Commission for a waiver of specific minimum qualification requirements as stated in OAR 718-050-0030 to 718-050-0050.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0090

Temporary Waiver

(1) For two (2) years from the date Division 50 of Chapter 718 becomes effective, the hiring authority shall have the power to grant temporary waiver of these rules to mediators who are approved under that hiring authority's Division 30 program. The hiring authority must require that the mediator presents and the hiring authority approves the mediator's plan to meet the requirements, that the mediator practices under supervision as set forth at OAR 718-050-0050, and that at the end of the mediation, the mediator hands a standard survey regarding the mediator's work to each client and asks that the clients mail the survey to the hiring authority. The Oregon Dispute Resolution Commission shall provide the standard survey.

(2) At the conclusion of the temporary waiver, the applicant must comply with the Qualifications Review required by OAR 718-050-0070.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0100

Malpractice Insurance

A financial mediator shall have in effect at all times the greater of:

(1) \$100,000 in malpractice insurance or self insurance with comparable coverage; or

(2) Such greater amount of coverage as the hiring authority requires.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0110

Continuing Education

The financial mediator shall have at least seven (7) hours annually of continuing education in financial issues in divorce and separation. Four (4) of these hours may also apply to the continuing education requirement at OAR 718-030-0090.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

718-050-0120

Standards of Conduct

All court-connected domestic relations financial mediators shall subscribe to the standards of conduct set forth at OAR 718-040-0100.

Stat. Auth.: ORS 36.175 & ORS 107.755(4)
Stats. Implemented: ORS 36.175, ORS 107.755(4) & OL 1997, Ch. 475
Hist.: DRC 2-1998, f. & cert. ef. 12-19-98

DIVISION 60

PROCEDURAL RULES FOR MEDIATION COMMUNICATIONS

718-060-0000**Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the “mediator” in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency’s employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an “agreement to mediate.”

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon Dispute Resolution Commission, or its designee, determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[Publications: The publications referenced to in this rule is available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: DRC 2-1999, f. & cert. ef. 8-3-99

718-060-0010

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation

communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon

statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

